

April 5, 2019

VIA ECF

The Honorable Lorna G. Schofield
U.S. District Court
Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

Re: *Contant, et al. v. Bank of Am. Corp., et al.*,
No. 17 Civ. 3139 (LGS) (S.D.N.Y.)

Dear Judge Schofield:

Pursuant to this Court's November 16, 2018 Order (ECF No. 176), the parties write to update the Court on the status of the above-captioned action.

Pending Motion to Dismiss/Pleadings

On December 20, 2018, defendants Barclays Bank PLC; UBS AG; UBS Group AG; The Royal Bank of Scotland plc; Credit Suisse Group AG; Société Générale; HSBC Bank plc; MUFG Bank, Ltd.; Standard Chartered Bank; and BNP Paribas Group (collectively, "Foreign Defendants") jointly moved to dismiss plaintiffs' Second Consolidated Class Action Complaint ("SCCAC") (ECF No. 183) for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). (ECF Nos. 197-200.) Plaintiffs filed their opposition (ECF Nos. 219-220) and supplemental letter (ECF No. 221) on January 28 and 31, 2019, respectively. Counsel for Defendant Credit Suisse Group AG contacted plaintiffs' counsel on February 15, 2019 to discuss voluntary dismissal of Credit Suisse Group AG. Foreign Defendants filed their reply on February 19, 2019. (ECF No. 228.) That motion is now fully briefed. (*See* ECF No. 176.) On that same day, plaintiffs voluntarily dismissed without prejudice Credit Suisse Group AG from the action. (ECF No. 226.)

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Non-Foreign Defendants’¹ answers were filed on January 11, 2019. (*See* ECF Nos. 205-216.)

Discovery

Discovery is stayed as to Foreign Defendants in connection with the filing of their aforementioned joint Rule 12(b)(2) motion to dismiss. Initial requests to and from these defendants may be served 14 days from any denial of such motion. (*See* ECF No. 176.) Plaintiffs and Non-Foreign Defendants exchanged initial disclosures on February 11, 2019.

Pursuant to this Court’s November 16, 2018 Order (ECF No. 176), Non-Foreign Defendants produced to plaintiffs documents and recordings produced in discovery in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* (S.D.N.Y. No. 13-cv-7789) (“FOREX”), as well as transactional data for spot FX Instrument transactions with entities identified as retail foreign exchange dealers (“RFEDs”) by plaintiffs in November 21, 2018 correspondence. Non-Foreign Defendants subsequently made supplemental productions of transactional data for spot FX Instrument transactions with additional entities plaintiffs identified as RFEDs in correspondence dated December 21, 2018. On February 11, 2019, defendants BNP Paribas US Wholesale Holdings Corp. and BNP Paribas Securities Corp. served a first interrogatory on plaintiffs. On March 11, 2019, The Goldman Sachs Group, Inc. and Goldman Sachs & Co. LLC also served a first set of interrogatories on plaintiffs, as did Deutsche Bank AG and Deutsche Bank Securities, Inc. On that same day, Non-Foreign Defendants served a first set of requests for production on plaintiffs. On March 14, 2019, plaintiffs served subpoenas on sixty-one third parties and on April 2, 2019, plaintiffs served a first interrogatory on all defendants.

On March 22, 2019, this Court entered a Deposition Protocol Order to govern the scheduling of depositions in this matter and the following two related matters: (i) *FOREX*; and (ii) *Allianz Global Investors GmbH, et al. v. Bank of America Corp., et al.* (S.D.N.Y. No. 18-cv-10364). (ECF No. 240.)

All parties respectfully agree that there should be an extension of the May 2, 2019 deadline for the close of fact discovery and pre-motion letters. (ECF No. 176.) The parties continue to meet and confer on the specifics of that extension and will present for the Court’s consideration a joint proposal or, if a joint proposal cannot be reached, competing proposals.

¹ In the context of this letter, “defendants” excludes settling defendants Citigroup Inc., Citibank, N.A., Citicorp, and Citigroup Global Markets Inc.

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Respectfully submitted,

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